

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MICHELLE TENZER-FUCHS, on behalf of
herself and all other similarly situated,

Plaintiff,

-against-

SWAPALEASE, INC.,

Defendant.

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Case No.: 2:20-cv-05066-FB-ARL

**DEFENDANT'S ANSWER TO PLAINTIFF'S
CLASS ACTION COMPLAINT**

Defendant Swapalease, Inc. ("Swapalease"), by its attorneys, answers Plaintiff Michelle-Tenzer Fuchs' ("Plaintiff")'s Class Action Complaint ("Complaint") as follows:

1. Swapalease denies the allegations in Paragraph 1 of the Complaint.
2. Swapalease is without sufficient information to either admit or deny the allegations in Paragraph 2 of the Complaint and therefore denies the same.
3. Swapalease denies the allegations in Paragraph 3 of the Complaint.
4. Swapalease denies the allegations in Paragraph 4 of the Complaint.
5. Swapalease denies the allegations in Paragraph 5 of the Complaint.
6. Swapalease denies the allegations in Paragraph 6 of the Complaint.
7. Swapalease denies the allegations in Paragraph 7 of the Complaint.
8. Swapalease denies the allegations in Paragraph 8 of the Complaint.
9. Swapalease denies the allegations in Paragraph 9 of the Complaint.
10. The allegations in Paragraph 10 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 10.

11. Swapalease is without sufficient information to either admit or deny the allegations in Paragraph 11 of the Complaint and therefore denies the same.

12. Swapalease denies the allegations in Paragraph 12 of the Complaint.

13. With respect to the allegations in Paragraph 13 of the Complaint, Swapalease answers that it is a Delaware corporation with its principal offices in Ohio, and that it operates an internet website but denies that it specifically does business in New York.

14. The allegations in Paragraph 14 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 14.

15. The allegations in Paragraph 15 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 15.

16. Swapalease is without sufficient information to either admit or deny the allegations in Paragraph 16 of the Complaint and therefore denies the same.

17. Swapalease is without sufficient information to either admit or deny the allegations in Paragraph 17 of the Complaint and therefore denies the same.

18. Swapalease is without sufficient information to either admit or deny the allegations in Paragraph 18 of the Complaint and therefore denies the same.

19. Swapalease is without sufficient information to either admit or deny the allegations in Paragraph 19 of the Complaint and therefore denies the same.

20. Swapalease is without sufficient information to either admit or deny the allegations in Paragraph 20 of the Complaint and therefore denies the same.

21. Swapalease is without sufficient information to either admit or deny the allegations in Paragraph 21 of the Complaint and therefore denies the same.

22. Swapalease denies the allegations in Paragraph 22 of the Complaint and its subparagraphs.

23. With respect to the allegations in Paragraph 23 of the Complaint, Swapalease admits that it owns its website, www.swapalease.com. Swapalease denies the remaining allegations in Paragraph 23 and specifically denies that it is a retailer.

24. Swapalease denies the allegations in Paragraph 24 of the Complaint.

25. Swapalease denies the allegations in Paragraph 25 of the Complaint and specifically denies that it has any retail business operations.

26. With respect to the allegations in Paragraph 26 of the Complaint, Swapalease denies the same to the extent they suggest that Swapalease's website resembles a physical marketplace or offers features of a physical marketplace, and any categorizations that its website serves as a place of public accommodation, and to the extent they allege that Swapalease's website is not accessible. Swapalease denies the remaining allegations in Paragraph 26.

27. Swapalease denies the allegations in Paragraph 27 of the Complaint.

28. Swapalease is without sufficient information to either admit or deny the allegations in Paragraph 28 of the Complaint and therefore denies the same.

29. Swapalease denies the allegations in Paragraph 29 of the Complaint.

30. Swapalease denies the allegations in Paragraph 30 of the Complaint.

31. Swapalease denies the allegations in Paragraph 31 of the Complaint.

32. Swapalease denies the allegations in Paragraph 32 of the Complaint.

33. Swapalease denies the allegations in Paragraph 33 of the Complaint.

34. Swapalease is without sufficient information to either admit or deny the allegations in Paragraph 34 of the Complaint and therefore denies the same.

35. Swapalease denies the allegations in Paragraph 35 of the Complaint.

36. Swapalease denies the allegations in Paragraph 36 of the Complaint.

37. Swapalease denies the allegations in Paragraph 37 of the Complaint.

38. Swapalease denies the allegations in Paragraph 38 of the Complaint.

39. Swapalease denies the allegations in Paragraph 39 of the Complaint.

40. Swapalease is without sufficient information to either admit or deny the allegations in Paragraph 40 of the Complaint and therefore denies the same.

41. Swapalease denies the allegations in Paragraph 41 of the Complaint and its sub-paragraphs.

42. Swapalease denies the allegations in Paragraph 42 of the Complaint.

43. The allegations in Paragraph 43 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 43.

44. The allegations in Paragraph 44 of the Complaint and its sub-paragraphs state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 44 and its sub-paragraphs and specifically denies that Plaintiff is entitled to the permanent injunction that she seeks.

45. Swapalease denies the allegations in Paragraph 45 of the Complaint.

46. With respect to the allegations in Paragraph 46 of the Complaint, Swapalease admits that it has invested substantial money in developing and maintaining its website, but it denies the remaining allegations in Paragraph 46.

47. Swapalease denies the allegations in Paragraph 47 of the Complaint.

48. The allegations in Paragraph 48 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 48 and specifically denies that Plaintiff should be able to certify a nationwide class.

49. The allegations in Paragraph 49 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 49 and specifically denies that Plaintiff should be able to certify a New York city subclass.

50. Swapalease denies the allegations in Paragraph 50 of the Complaint and specifically denies that Plaintiff should be able to certify a class.

51. Swapalease denies the allegations in Paragraph 51 of the Complaint and specifically denies that Plaintiff should be able to certify a class.

52. Swapalease denies the allegations in Paragraph 52 of the Complaint and specifically denies that Plaintiff should be able to certify a class.

53. Swapalease denies the allegations in Paragraph 53 of the Complaint and specifically denies that Plaintiff should be able to certify a class.

54. Swapalease denies the allegations in Paragraph 54 of the Complaint and specifically denies that Plaintiff should be able to certify a class.

FIRST CAUSE OF ACTION
VIOLATIONS OF THE ADA, 42 U.S.C. § 12181 *et seq.*

55. Swapalease incorporates by reference all preceding paragraphs as if fully set forth herein.

56. The allegations in Paragraph 56 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 56.

57. The allegations in Paragraph 57 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 57.

58. The allegations in Paragraph 58 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 58.

59. The allegations in Paragraph 59 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 59.

60. The allegations in Paragraph 60 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 60.

61. Swapalease is without sufficient information to either admit or deny the allegations in Paragraph 61 of the Complaint relating to Plaintiff's physical disability and membership in a protected class of persons under the ADA and therefore denies the same. Swapalease denies the remaining allegations in Paragraph 61.

62. Swapalease denies the allegations in Paragraph 62 of the Complaint and specifically denies that Plaintiff is entitled to any relief.

SECOND CAUSE OF ACTION
VIOLATIONS OF THE NYSHRL

63. Swapalease incorporates by reference all preceding paragraphs as if fully set forth herein.

64. The allegations in Paragraph 64 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 64.

65. The allegations in Paragraph 65 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 65.

66. The allegations in Paragraph 66 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 66.

67. Swapalease denies the allegations in Paragraph 67 of the Complaint.

68. The allegations in Paragraph 68 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 68.

69. The allegations in Paragraph 69 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 69.

70. Swapalease denies the allegations in Paragraph 70 of the Complaint.

71. The allegations in Paragraph 71 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 71.

- 72. Swapalease denies the allegations in Paragraph 72 of the Complaint.
- 73. Swapalease denies the allegations in Paragraph 73 of the Complaint.
- 74. Swapalease denies the allegations in Paragraph 74 of the Complaint.
- 75. Swapalease denies the allegations in Paragraph 75 of the Complaint.
- 76. Swapalease denies the allegations in Paragraph 76 of the Complaint.
- 77. Swapalease denies the allegations in Paragraph 77 of the Complaint.
- 78. Swapalease denies the allegations in Paragraph 78 of the Complaint and specifically denies that Plaintiff is entitled to any relief.

THIRD CAUSE OF ACTION
VIOLATIONS OF THE NYCHRL

79. Swapalease incorporates by reference all preceding paragraphs as if fully set forth herein.

80. The allegations in Paragraph 80 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 80.

81. The allegations in Paragraph 81 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 81.

82. The allegations in Paragraph 82 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 82.

83. The allegations in Paragraph 83 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 83.

84. The allegations in Paragraph 84 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 84.

85. The allegations in Paragraph 85 of the Complaint and its sub-paragraphs state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 85 and its sub-paragraphs.

86. Swapalease denies the allegations in Paragraph 86 of the Complaint.

87. Swapalease denies the allegations in Paragraph 87 of the Complaint.

88. Swapalease denies the allegations in Paragraph 88 of the Complaint.

89. Swapalease denies the allegations in Paragraph 89 of the Complaint.

90. Swapalease denies the allegations in Paragraph 90 of the Complaint.

91. Swapalease denies the allegations in Paragraph 91 of the Complaint and specifically denies that Plaintiff is entitled to any relief.

FOURTH CAUSE OF ACTION
DECLARATORY RELIEF

92. Swapalease incorporates by reference all preceding paragraphs as if fully set forth herein.

93. The allegations in Paragraph 93 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Swapalease denies the allegations in Paragraph 93.

94. Swapalease denies the allegations in Paragraph 94 of the Complaint.

In response to Plaintiff's WHEREFORE clause, Swapalease admits that Plaintiff seeks the relief enumerated therein, but denies that Plaintiff has stated a cognizable claim that would entitle her to any relief whatsoever.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Plaintiff's Complaint fails to state a cause of action for which relief can be granted.

SECOND DEFENSE

Plaintiff's Complaint fails for improper venue.

THIRD DEFENSE

Plaintiff's Complaint fails because this court lacks personal jurisdiction over Swapalease.

FOURTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches, ratification, and acquiescence.

FIFTH DEFENSE

Swapalease acted in good faith with respect to its obligations under federal and state law and, therefore, Plaintiff's claims are barred.

SIXTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to reasonably mitigate her damages.

SEVENTH DEFENSE

Plaintiff's claims are barred to the extent that Plaintiff cannot establish that any action taken by Swapalease proximately caused injury to Plaintiff.

EIGHTH DEFENSE

Plaintiff's claims are barred to the extent that Plaintiff has not suffered any damages.

NINTH DEFENSE

Plaintiff's claims are barred to the extent they violate public policy.

TENTH DEFENSE

Common questions of law and fact do not exist among the purported Class or Sub-Class.

ELEVENTH DEFENSE

Plaintiff's claims are not typical of the purported Class or Sub-Class.

TWELFTH DEFENSE

Plaintiff will not fairly and adequately represent and protect the interests of the purported Class or Sub-Class.

THIRTEENTH DEFENSE

Fact and legal questions common to purported Class or Sub-Class Members do not predominate over questions affecting only individual Class or Sub-Class Members.

FOURTEENTH DEFENSE

Maintaining this lawsuit as a class action will not serve judicial economy.

FIFTEENTH DEFENSE

Swapalease reserves the right to assert, via amended pleadings, any and all additional and/or further defenses as may be revealed by additional information and/or documentation produced and/or acquired through discovery or otherwise herein.

RESERVATION OF RIGHTS

1. Swapalease continues to gather information about the allegations contained in the Complaint.
2. Swapalease reserves any and all rights to amend this Answer from time to time and at any time, including the filing of counterclaims.

WHEREFORE, Swapalease respectfully submits that Plaintiff's Complaint should be dismissed in its entirety with prejudice and that Swapalease should be awarded its costs, attorneys' fees, and any other relief this Court deems appropriate.

Dated: Uniondale, New York
November 13, 2020

Respectfully submitted,

WESTERN BALL EDERER
MILLER ZUCKER & SHARFSTEIN, LLP

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